

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JOE T. BELL,)
)
)
Plaintiff,)
)
)
v.) **CIV-16-706-R**
)
)
SEAN PATRICK MORGAN,)
ASSISTANT DISTRICT ATTORNEY,)
et al.,)
)
Defendants.)

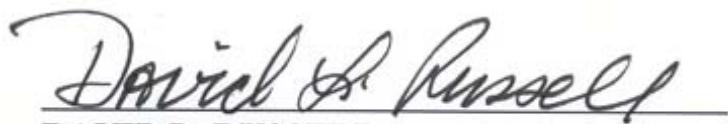
ORDER

Mr. Bell filed this action pursuant to 42 U.S.C. § 1983 alleging violation of his civil rights with regard to his criminal conviction. Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to United States Magistrate Judge Suzanne Mitchell for preliminary review. On August 11, 2016, Judge Mitchell issued a Report and Recommendation wherein she recommended the action be dismissed upon filing pursuant to 28 U.S.C. § 1915A(a) and *Heck v. Humphrey*, 512 U.S. 477 (1994), because Plaintiff's conviction has not been overturned and therefore any claims challenging the constitutionality of his criminal proceedings would be premature as they would call into question the validity of his conviction. The matter is currently before the Court on Plaintiff's timely objection to the Report and Recommendation, which gives rise to the Court's obligation to undertake a *de novo* review of those portions of the Report and Recommendation to which Plaintiff makes specific objection. Having conducted this review the Court finds as follows.

Plaintiff's objection argues that the Court is misunderstanding his claims and that to fail to permit him to proceed would relieve the Defendants of their burden to prove the claims are false. Plaintiff, however, misunderstands the Report and Recommendation. Plaintiff was convicted in the District Court of Oklahoma County in 1997 and is currently serving a fifty-year sentence. The

claims he seeks to pursue involve whether his conviction is valid because, he alleges, that his constitutional rights were violated during the trial process. Such a claim cannot give rise to civil relief, however, until Plaintiff's conviction has been invalidated, for example by the granting of an application for post-conviction relief or a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Until such time as his conviction has been invalidated he cannot pursue a civil rights claim that would require, in order for him to prevail, invalidation of his conviction. Accordingly, his claims that exculpatory evidence was withheld and that false testimony was used to obtain a conviction cannot proceed at this time. Plaintiff requests that the Court issue a stay in this case because he has filed a petition in the District Court of Oklahoma County. The Court declines to enter a stay herein, Plaintiff may return upon invalidation of his conviction. Furthermore, Plaintiff's Motion for Discovery and Motion for Evidentiary Hearing are hereby denied as moot. The Report and Recommendation is hereby ADOPTED and this action will be dismissed without prejudice.

IT IS SO ORDERED this 7th day of September, 2016.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE